

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 7, 2009 Session

**VELMA MILLER AND ANN DAVENPORT, CO-ADMINISTRATORS OF
THE ESTATE OF JERRY D. HICKS, DECEASED v. REGIONS BANK,
BETTY JOHNSON AND MICHAEL KNOWLTON**

**Appeal from the Circuit Court for Fentress County
No. 8307 John McAfee, Judge**

No. M2008-01709-COA-R3-CV - Filed November 20, 2009

Plaintiffs, the administrators of an estate, brought suit against the bank that served as guardian of the deceased's finances and two of its employees. Plaintiffs allege that the defendants failed to spend sufficient money on the deceased, resulting in pain and suffering and loss of enjoyment of life prior to his death. The circuit court dismissed the complaint based on the doctrines of res judicata and collateral estoppel. Judgment of the circuit court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

John Edward Appman, Jamestown, Tennessee, for the appellants, Velma Miller and Ann Davenport.

Charles W. Cook and Joseph F. Edwards, Nashville, Tennessee, for the appellees, Regions Bank, Betty Johnson, and Michael Knowlton.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

The deceased, Jerry D. Hicks, was injured in a vehicular accident in 1966 while serving in the United States Army. The accident rendered him incompetent, and he was discharged from the Army as physically and mentally impaired. In 1968, Hicks's father, Least Hicks, was appointed his son's guardian. Least Hicks was removed in 1974 and replaced by Ellis Young. In 1975, First Peoples Bank of Johnson City, Tennessee, was appointed successor guardian of Hicks. A succession of banks thereafter served as financial guardian for Hicks. The defendant, Regions Bank, then

AmSouth Bank,¹ assumed the role in 1998 and submitted yearly accountings from March 1, 1998, to February 28, 2006. Hicks died on July 23, 2006, leaving an estate estimated at \$780,561.15.

AmSouth filed a petition for the approval of the final accounting in the Chancery Court for Fentress County on August 11, 2006, requesting \$2,420.01 in compensation for services provided as guardian and \$1,543.30 in legal fees. The plaintiffs, Velma Miller and Ann Davenport, the administrators of Hicks's estate, filed an exception to the petition for the approval of the final accounting. They objected to disbursements of legal fees and disbursements of the amounts of \$452.40 paid for utilities at Hicks's home and \$12,000 worth of furniture that was allegedly moved from Hicks's home to the assisted living facility and not returned upon his death. On March 12, 2007, the chancery court approved the final accounting submitted by AmSouth and closed the guardianship. In a separate order on the same day, the chancery court made three additional rulings. First, the court ruled that AmSouth Bank had been the financial guardian of Hicks and not the guardian of the person. Second, the court found that the disbursements for utility bills contested by the plaintiffs were reasonable, necessary, and expended in the best interest of Hicks and his estate. Third, the court found that AmSouth did nothing improper with regard to the furniture or personal property of Hicks. The plaintiffs did not appeal the chancery court's order.

The plaintiffs filed a complaint in the Circuit Court of Fentress County on July 17, 2007, against Regions Bank; Betty Johnson, the Regions Bank employee who signed the annual reports on behalf of the bank; and Michael Knowlton, Regions Bank's attorney. The complaint alleges that Regions Bank, acting through the decisions of Johnson and Knowlton, failed to spend sufficient money on Hicks while Regions was acting as Hicks's court appointed guardian. This allegedly resulted in pain and suffering and loss of enjoyment of life. The complaint focuses particularly on the decision to place Hicks in Mountain View Assisted Living Center in Loudon, Tennessee, from 2001 through 2005. It alleges that Hicks lost approximately one-half of his weight as a result of being placed in Mountain View and that Johnson and Knowlton kept the plaintiffs and their brothers and sisters from having meaningful contact with Hicks. The plaintiffs sought compensatory damages in the amount of \$2,000,000 and punitive damages in the amount of \$6,000,000.

The defendants filed a motion to dismiss on three grounds. First, under the doctrines of res judicata and collateral estoppel, the defendants asserted that the plaintiffs' claims were barred by the final orders of the chancery court because the plaintiffs presented the same issues in that court and failed to appeal its ruling. Second, the defendants contended that the plaintiffs' claims were contrary to federal and state law under which Regions Bank must act under the supervision of the Department of Veterans Affairs ("VA") and the court.² Third, the defendants alleged that the plaintiffs' claims

¹ Regions Financial Corporation and AmSouth Bancorporation merged in 2006. The names "Regions Bank" and "AmSouth Bank" were used interchangeably throughout these proceedings.

² According to the defendants, the plaintiffs' claim would require a finding that Regions acted independently and without any supervision by the court or federal authorities, contrary to applicable statutes. The defendants cited 38 U.S.C. § 5502; 38 C.F.R. §§ 13.2, 13.100, 23.59; and Tenn. Code Ann. §§ 34-1-123, 34-3-108, 34-5-103, 34-5-111 in
(continued...)

were barred by estoppel and waiver because the plaintiffs never sought replacement of Regions Bank as guardian or challenged any accountings prior to the final accounting.

The motion to dismiss was argued on January 15, 2008. The circuit court issued an order on February 20, 2008, acknowledging that the plaintiffs might have failed to state a claim upon which relief could be granted but requiring more information about the underlying facts before ruling on the motion. Specifically, the court requested proof as to who made the decision to place Hicks in Mountain View. The court ordered the parties to obtain the sworn testimony of Johnson, Knowlton, and a VA representative with knowledge regarding Hicks's relocation to Mountain View and decisions relevant to his stay there. Affidavits were thereafter submitted by both parties.

On June 4, 2008, the circuit court heard arguments on the motion to dismiss. The court entered an order dismissing the complaint on June 27, 2008. The court ruled that the plaintiffs' claims were barred under the doctrines of res judicata and/or collateral estoppel by the March 12, 2007 final orders of the chancery court. The circuit court found that the issues raised by the plaintiffs at the November 27, 2006 hearing before the chancery court to approve the final accounting were the same issues that the plaintiffs raised at the circuit court level. The court made no findings as to the other two grounds for dismissal asserted by the defendants.

STANDARD OF REVIEW

The issue raised in this matter is whether the trial court erred in granting the defendants' motion to dismiss. The purpose of a Rule 12.02(6) motion to dismiss is to test only the legal sufficiency of the complaint, not the strength of the complainant's proof. *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999). In determining whether the pleadings state a claim upon which relief can be granted, the court should not consider matters outside the pleadings. *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002). In reviewing a trial court's ruling on a motion to dismiss based on Rule 12.02(6), we must liberally construe the pleadings, presuming all factual allegations are true and drawing all reasonable inferences in favor of the complainant. *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31 (Tenn. 2007); *Kincaid v. SouthTrust Bank*, 221 S.W.3d 32, 37 (Tenn. Ct. App. 2006).

However, "if, on a motion . . . to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." Tenn. R. Civ. P. 12.02. At trial, the defendants filed a motion to dismiss for failure to state a claim upon which relief can be granted. When the circuit court conducted a hearing on this motion, it considered affidavits submitted by the parties pertaining to Hicks's placement in Mountain View and his treatment at the facility. When the circuit court did so, it converted the defendants' motion to dismiss to a motion for summary judgment.

²(...continued)

support of the premise that Regions was under the strict control and supervision of the VA and the chancery court with regard to benefits and guardianship.

In reviewing a summary judgment, this court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50 (Tenn. 1997). The party seeking summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that the party is entitled to judgment as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). We must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. *Id.*; *Byrd v. Hall*, 847 S.W.2d 208, 210-11 (Tenn. 1993). If there is a dispute as to any material fact or if there is any doubt as to the existence of a material fact, summary judgment cannot be granted. *Byrd*, 847 S.W.2d at 211; *EVCO Corp. v. Ross*, 528 S.W.2d 20, 25 (Tenn. 1975). To shift the burden of production to the nonmoving party who bears the burden of proof at trial, a moving party must negate an element of the opposing party's claim or "show that the nonmoving party cannot prove an essential element of the claim at trial." *Hannan v. Alltel Publ'g Co.*, 270 S.W.3d 1, 9 (Tenn. 2008).

The plaintiffs specifically challenge the trial court's dismissal of their complaint based on res judicata and collateral estoppel. A trial court's decision as to whether a subsequent lawsuit is barred by the principles of res judicata or collateral estoppel presents a question of law that this court reviews de novo with no presumption of correctness. *In re Estate of Boote*, 198 S.W.3d at 719.

ANALYSIS

The issue before us is whether the chancery court's approval of a final guardianship accounting acts as res judicata or collateral estoppel to bar a subsequent tort action in circuit court based on the guardian's alleged mismanagement of the ward's property.

Res judicata is a claim preclusion doctrine whereas collateral estoppel is an issue preclusion doctrine. *State ex rel. Cihlar v. Crawford*, 39 S.W.3d 172, 178 (Tenn. Ct. App. 2000). Res judicata is based on the principles that "the same parties, in the same capacities, should not be required to litigate anew a matter which might have been determined and settled in a former litigation" and that "litigation should be determined with reasonable expedition, and not protracted through inattention and lack of diligence on the part of litigants or their counsel." *Jordan v. Johns*, 79 S.W.2d 798, 802 (Tenn. 1935). The doctrine of collateral estoppel bars parties from relitigating issues that were decided in an earlier suit. *Beaty v. McGraw*, 15 S.W.3d 819, 824 (Tenn. Ct. App. 1998). The Tennessee Supreme Court has defined the doctrines as follows:

The doctrine of res judicata bars a second suit between the same parties or their privies on the same cause of action with respect to all issues which were or could have been litigated in the former suit. Collateral estoppel operates to bar a second suit between the same parties and their privies on a different cause of action only as to issues which were actually litigated and determined in the former suit.

Massengill v. Scott, 738 S.W.2d 629, 631 (Tenn. 1987).

The analysis under both doctrines turns on the issues. “Once an issue has been actually or necessarily determined by a court of competent jurisdiction, the doctrine of collateral estoppel renders that determination conclusive on the parties and their privies in subsequent litigation, even when the claims or causes of action are different.” *Cihlar*, 39 S.W.3d at 178-79. Stated differently, collateral estoppel is “generally held to be applicable only when it affirmatively appears that the issue involved in the case under consideration has already been litigated in a prior suit between the same parties, even though based upon a different cause of action, if the determination of such issue in the former action was necessary to the judgment.” *Massengill*, 738 S.W.2d at 631-32. Alternatively, “[t]he key to an analysis under *res judicata* is whether the issue *could have been litigated* in the former lawsuit.” *Baldwin v. Knox County Bd. of Educ.*, No. 03A01-9903-CH-00110, 1999 WL 893827, at *2 (Tenn. Ct. App. Oct. 15, 1999).

The plaintiffs claim that the doctrine of collateral estoppel does not apply because they presented different issues in circuit court than were adjudicated in chancery court. According to the plaintiffs, the exceptions made to the final accounting in chancery court concerned disbursements made from Hicks’s account; whereas, the issues raised in circuit court were based upon the negligent care that Hicks was provided. However, a comparison of the chancery court transcript for the final accounting proceeding and the plaintiffs’ complaint in the circuit court reveals that the same issues were presented in both courts.

The plaintiffs first raised the issue of the defendants’ treatment of Hicks in the final accounting proceeding, claiming that the issue was relevant as to whether the defendants were entitled to compensation as guardian. The following were among the issues raised by the plaintiffs during the final accounting proceeding:

- The assisted living facility was selected by AmSouth and not the family.
- Hicks deteriorated from 150 pounds to 80 pounds while in Mountain View.
- AmSouth was motivated primarily by money. “The proof will show throughout this that the bank has been interested in one thing, and that is money. . . . [T]his bank and Mr. Knowlton have seemed to be more interested in what amount of money the bank would get, and what amount of money Mr. Knowlton would get in a fee. And that’s what the family is upset about, and that’s why we are objecting to this final accounting.”
- Hicks had an estate of \$700,000 but did not receive the care that a person with that amount of money should have received.
- AmSouth made the decisions as to where Hicks lived and who visited him. For example, the family could only visit him at specific times and was not allowed to take him out for coffee. Additionally, the defendants claimed to need more notice

when a family member passed away and the family requested money so that Hicks could attend the funeral.

Contrast these issues with those raised in the plaintiffs' complaint in the circuit court:

- Knowlton and Johnson caused Hicks to be placed in Mountain View.
- Hicks lost half his weight as a result of being placed in Mountain View, deteriorating from 165 pounds to 85 pounds.
- AmSouth was motivated primarily by money. "[T]he Defendants were only interested in saving the money so that they might keep it on deposit in their bank, for their own benefit."
- The defendants caused Hicks to suffer pain and loss of enjoyment of life prior to his death, despite having sufficient funds to provide for his well-being.
- Johnson and Knowlton kept the plaintiffs and their brothers and sisters from having meaningful contact with Hicks.

We agree with the circuit court's conclusion in its June 27, 2008 order granting the defendants' motion to dismiss that "[t]he issues raised by Plaintiffs in the Exception and by their counsel on November 26, 2007 are the same issues that the Plaintiffs have raised in this case in support of their claims against the Defendants." The chancery court determined the issue of the defendants' alleged mismanagement of Hicks's money and found no merit to the plaintiffs' allegations. The court ratified, confirmed, and approved the "disbursement of all funds and fees." The chancery court concluded that "the disbursement of these funds and fees were [sic] reasonable, necessary, and in the best interest of the Ward." If the plaintiffs were unsatisfied with the chancery court's ruling, they could have sought recourse by appealing the final accounting as outlined in Tenn. Code Ann. § 30-2-609. Additionally, as the defendants point out, the plaintiffs also had the option of seeking removal of the guardian before Hicks's death.

The plaintiffs attempt to distinguish their circuit court claim from the chancery court proceeding by asserting that "[t]his cause presents the underlying issues of improper and negligent care by the Defendants rather than the mismanagement of the ward's funds." We disagree with this characterization of the plaintiffs' claim. For the purposes of determining whether a subsequent cause of action is barred by res judicata, the substance and not the form of the cause of action is determinative:

It is a fundamental principle of jurisprudence that material facts or questions, which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action

between the same parties or their privies, regardless of the form the issue may take in the subsequent action

Cantrell v. Burnett & Henderson Co., 216 S.W.2d 307, 309 (Tenn. 1948).

Although phrased as a tort claim, the underlying issue in the plaintiffs' complaint is the mismanagement of the ward's funds, an issue already litigated in chancery court. The plaintiffs alleged in their complaint that "instead of showing concern for the well-being of Jerry Don Hicks and utilizing his money for his benefit and enjoyment of life, the Defendants were only interested in saving the money so that they might keep it on deposit in their bank, for their own benefit." The plaintiffs further claimed that "the Defendants, by not properly providing for the care of Jerry Don Hicks, caused their brother to suffer pain and loss of enjoyment of life prior to his death, although he left an estate in the amount of \$780,561.15, which would have been sufficient funds to provide for his well-being." The focus of the plaintiffs' complaint is the defendants' alleged mismanagement of Hicks's money. This issue was already litigated in chancery court. It is well-established in Tennessee that "piecemeal presentation of suits and defenses at the whim of the parties" is contrary to the policy of our law. *McKinney v. Widner*, 746 S.W.2d 699, 706 (Tenn. Ct. App. 1987). The circuit court's ruling comports with the stated public policy of the doctrine of res judicata: "to protect individuals from the burden of litigating multiple lawsuits, to promote judicial economy, and to promote the policy favoring reliance on final judgments by minimizing the possibility of inconsistent decisions." *Gerber v. Holcomb*, 219 S.W.3d 914, 918 (Tenn. Ct. App. 2006) (quoting *Myers v. Olson*, 676 P.2d 822, 824 (N.M. 1984)).

Other jurisdictions that have considered this issue agree and have concluded that a valid order in the final accounting of a guardian has res judicata effect, effectively barring the ward's subsequent action for mismanagement. See, e.g., *Adams v. Martin*, 44 P.2d 572, 573 (Cal. 1935); *Boozer v. Higdon*, 313 S.E.2d 100, 102 (Ga. 1984); *Moxley v. Ind. Nat'l Bank*, 443 N.E.2d 374, 375, 381 (Ind. Ct. App. 1982); *Byington v. Harper*, 259 N.W. 406, 407 (Wis. 1935).

There is widespread agreement, frequently illustrated in those cases in which a former ward, or one authorized to sue on the former ward's behalf, brings suit against the former guardian for alleged improprieties in the management of the ward's affairs during the course of the guardianship, that the judgment of a proper court upon the guardian's final account rendered in the guardian's final accounting or settlement proceedings is res judicata in a subsequent suit concerning matters comprised in the guardian-ward relationship, and thus is subject to attack only upon such proof of fraud or gross mistake as would justify opening any other judgment.

Russell G. Donaldson, Annotation, *Judgment in Guardian's Final Accounting Proceedings as Res Judicata in Ward's Subsequent Action Against Guardian*, 34 A.L.R. 4TH 1121 (1984). *Moxley* is particularly instructive because it involved a probate proceeding to approve a guardian's final

accounting followed by a tort action for misconduct and mismanagement. *Moxley*, 443 N.E.2d at 375.

The plaintiffs also argue that the doctrine of res judicata is inapplicable because the chancery court lacked jurisdiction to hear their claims for personal suffering and injury under Tenn. Code Ann. § 16-11-102. They argue that because the tort claims in this suit could not have been litigated in chancery court, res judicata does not bar their litigation in circuit court.

Generally, the chancery court has concurrent jurisdiction with the circuit court over all civil actions triable in the circuit court. Tenn. Code Ann. § 16-11-102(a). Tenn. Code Ann. § 16-11-102(a) creates an exception to this concurrent jurisdiction for causes of action for “unliquidated damages for injuries to person or character.” However, if not objected to on jurisdictional grounds, these excluded cases “may be transferred to the circuit court of the county, or heard and determined by the chancery court upon the principles of a court of law.” Tenn. Code Ann. § 16-11-102(b). Thus, the chancery court is not necessarily precluded from hearing causes of action for unliquidated damages for injuries to person or character.

As we have already noted, the plaintiffs themselves raised these same issues in the chancery court final accounting proceedings. They cannot now be permitted to cast aside that court’s findings on the issues they raised.

Treating the defendants’ motion to dismiss as a motion for summary judgment, we affirm the circuit court and find that the defendants demonstrated that no genuine dispute of material fact exists and that they are entitled to judgment as a matter of law. Costs of appeal are assessed against the appellants, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE